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CASE NUMBER: 16-2-06389-6 SEA

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Attorneys for Plaintiffs

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

REBECCA WEST, an individual; TAMI
MATSON, an individual; TIFFANY
HAMAN, an individual,

Plaintiffs,

vs.

RIDE THE DUCKS INTERNATIONAL,
LLC, a foreign company; RIDE THE
DUCKS OF SEATLITE, LLC, a Washington
Company; ERIC BISHOP and JANE DOE
BISHOP, and their marital community,

Defendants.

No.

COMPLAINT FOR DAMAGES

Demand for Jury Trial

COMES NOW Plaintiffs, by and through their attorneys Darrell L. Cochran and Kevin M. Hastings, and the law firm of Pfau Cochran Vertetis Amala PLLC, to bring a cause of action against the defendants, and allege the following:

COMPLAINT FOR DAMAGES

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 PFAU COCHRAN
VERTETIS AMALA
A Professional Limited Liability Company

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I. PARTIES

1. Plaintiff Tami Matson. Plaintiff Tami Matson at all relevant times was a resident of King County, Washington.

2. Plaintiff Rebecca West. Plaintiff Rebecca West at all relevant times was a resident of Billings, Montana.

3. Plaintiff Tiffani Haman. Plaintiff Tiffani Haman at all relevant times was a resident of King County, Washington.

4. Ride the Ducks International, LLC. Defendant Ride the Ducks International, LLC (“RTD International”) is a limited liability company organized under the laws of the State of Missouri with its principal place of business in the State of Georgia.

5. Ride the Ducks of Seattle, LLC. Defendant Ride the Ducks of Seattle (“RTD Seattle”) is a limited liability company organized under the laws of the State of Washington with its principal place of business in King County, Washington. RTD Seattle is a citizen of the State of Washington.

6. Eric Bishop. Defendant Eric Bishop was an employee of RTD Seattle acting within the course and scope of his employment with RTD Seattle at the time of the events alleged herein. Mr. Bishop was driving Ride the Duck Boat No. 6, the vehicle involved in the below-described collision. Mr. Bishop is a citizen of the State of Washington domiciled in Snohomish County, Washington. All acts of Mr. Bishop were also done individually and on behalf of his marital community.

II. JURISDICTION AND VENUE

7. Jurisdiction. This court has proper jurisdiction over Defendants because the acts and omissions alleged in this complaint arose out of activities and business within Washington. This court also has proper universal original subject matter jurisdiction under the Washington State Constitution and RCW 2.08.010.

8. Venue. Venue is proper under RCW 4.12.025 because Defendant RTD Seattle has its principal place of business and transacts business in King County, Washington. Venue is also proper under RCW 4.12.020 because the acts and omissions alleged in this complaint also resulted in personal injury in King County, Washington.

III. FACTS

9. Facts; RTD Seattle Duck Vehicle Driver Loses Control and Crashes Into Oncoming Traffic. On September 24, 2015, at approximately 1111 hours, Eric Bishop was driving a retrofitted and remanufactured WWII amphibious military vehicle, identified by RTD Seattle as DUKW No. 6, across the George Washington Memorial Bridge (“Aurora Bridge”) on the SR 99 highway in Seattle, Washington. Bishop suddenly lost control of DUKW No. 6, veered into oncoming traffic and smashed into a motor coach operated by CWA Inc., d/b/a Bellair Charters Hesselgrave South.

10. Facts; the crash injured dozens and killed 5 individuals. The massive crash that resulted injured approximately 64 individuals and killed 5. Victims of this horrible crash were both on the DUCK No. 6 as well as the motor coach.

11. Facts; RTD International Retrofitted and Remanufactured DUKW No. 6 to RTD Seattle. RTD International is in the business of retrofitting and remanufacturing old WWII amphibious military vehicles for use as tour vehicles in various cities across the United States. In or around 2005, RTD International had completed retrofitting and remanufacturing DUKW NO. 6 and then sold the vehicle to RTD Seattle. RTD International retained licensing rights, allowing it to collect five percent of all gross ticket sales from RTD Seattle tours. The resulting business relationship created is best described as a joint venture: RTD International builds and distributes the amphibious vehicles to various local businesses and reserves a portion of the daily tour profit generated by the vehicle.

12. Facts; RTD International Knew that DUKW No. 6 Had a Dangerously Defective Axle Housings. RTD International knew that its retrofitted and remanufactured WWII

1 amphibious military vehicles had dangerously defective axle housings, and in or around
2 October 2013, RTD International sent a notice regarding the defects to the operators of
3 approximately 57 of its amphibious vehicles. The notice explained how to modify and
4 strengthen the axle housing to prevent fractures, as well as acknowledged that “the visual
5 detection of a failing axle housing is not possible. Other than sending this notice, RTD
6 International took no further action, including but not limited to a recall, to ensure that the
7 defects it identified were remedied.

8 13. Facts; RTD International retrofitted, manufactured, and remanufactured DUKW
9 No. 6 so as to render it unsafe. RTD International retrofitted, manufactured, and
10 remanufactured DUKW No. 6 here by deviating in material ways from the design specifications
11 and /or performance standards of the manufacturer, and / or by deviating in material ways from
12 otherwise identical WWII amphibious military vehicles. As a result, RTD International caused
13 DUKW No. 6 to have dangerous defects in the axle housing, resulting in fractures or other
14 defects that materially deviated from the specifications and standards of other similar products
15 manufactured or remanufactured by RTD International.

16 14. Facts; the burden on RTD International to design a safe product that would have
17 prevented the harms alleged in this complaint is substantially outweighed by the likelihood of
18 serious injuries and harms. RTD International’s practice of retrofitting, manufacturing, and
19 remanufacturing the WWII amphibious military vehicles was a profit source. The extra steps
20 needed to make the vehicles safe, such as by ensuring that the axles did not suffer from
21 dangerous product defects, was small compared to the likelihood that allowing defective units
22 to be operated on city streets would cause catastrophic injuries.

23 15. Facts; RTD International failed to provide adequate warnings or instructions to
24 RTD Seattle regarding maintenance and repair of DUKW No. 6 and the likelihood of a
25 catastrophic crash for failing to properly fix defective parts. The notice that RTD International
26 provided to RTD Seattle was inadequate and failed to provide sufficient instructions on how to

1 repair known defects in the WWII amphibious military vehicles. The notice was equally
2 defective for failing to sufficiently warn and guard against the dangers that would foreseeably
3 follow from operating amphibious vehicles with defective parts on city streets and in city traffic.

4 16. Facts; DUKW No. 6 had a failure to the left axle that was a proximate cause of
5 the crash. One of the factors that caused the crash was a catastrophic failure to the left axle of
6 DUKW No. 6. According to the National Traffic Safety Board, this axle had an “earlier
7 modification” that was at some point recommended by RTD International; however, there was
8 never an associated service bulletin that documented the modification. Upon information and
9 belief, the “earlier modification” to the axle housing was not the same recommendation that
10 RTD International outlined in its October 2013 notice regarding the defective axle housing.

11 17. Facts; Washington Utilities and Transportation Commission (“WUTC”)
12 suspended RTD Seattle’s operations. Following the massive crash that is at the center of this
13 lawsuit, the WUTC suspended RTD Seattle from operating the retrofitted and remanufactured
14 WWII amphibious military vehicles in Washington. On December 15, 2015, WUTC released
15 a report that identified hundreds of safety-related violations, stating, “All of the violations
16 discovered were avoidable and must be corrected immediately.”

17 18. Facts; RTD Seattle admitted to 463 safety violations and agreed to pay \$222,000
18 in penalties. WUTC announced that its investigators found 159 acute and critical safety
19 violations and another 304 violations related to record-keeping. RTD Seattle agreed to pay
20 \$222,000 in penalties related to these violations.

21 19. Facts; RTD Seattle’s actions fell below the ordinary care in many regards. As
22 operator of DUKW No. 6, RTD Seattle owed a duty of care to its passengers and others using
23 the streets and thoroughfares. This defendant breached its duty of ordinary care in many
24 regards, including but not limited to (1) failing to properly inspect, maintain, and repair DUKW
25 No. 6; (2) failing to use reasonable care to warn against and remedy those defects; (3) failing to
26 address the 2013 notice that RTD International issued; (4) knowingly operating a dangerous

1 and defective and unsafe vehicle on roadways in a busy city; (5) knowingly requiring its drivers
2 to serve as tour guides while also operating a large vehicle; (6) knowingly utilizing SR 99
3 despite earlier warnings that this roadway was dangerous for its narrow lanes and lack of a
4 center median; (7) failing to properly train and supervise its mechanics and drivers; (8) failing
5 to properly inspect its fleet of amphibious military vehicles; (9) knowingly operating the
6 amphibious military vehicles in a busy city at highway speeds; and (10) violating WAC 480-
7 30-221.

8 20. Facts; RTD Seattle announced changes in routes and practices in the wake of the
9 crash. Since the crash, RTD Seattle announced that it would no longer use the SR 99 Aurora
10 Bridge. RTD Seattle has also stated that it will now use a separate drive and tour guide instead
11 of combining these two functions into one employee.

12 21. Facts; Defendants knew that the SR 99 Aurora Bridge had dangerously narrow
13 lanes. Lane width on the Aurora Bridge from west to east is 10 feet, 9 feet, 9.5 feet, 9 feet, and
14 10 feet. The speed limit is 40 miles per hour, but traffic regularly flows much faster across the
15 bridge than the posted limit. In 2002, the Washington State Department of Transportation
16 released a news bulletin commissioning a safety study of the Aurora Bridge because it “ranks
17 third among all high-accident corridors in the state.” Study data between 1999 and 2001
18 showed that there was more than 1,500 accidents in an eight-mile stretch of SR 99. The study
19 was completed in March 2003, and it recommended widening the lanes by moving the
20 pedestrian walkways to underneath the bridge.

21 22. Facts; Plaintiffs suffered damages as a direct and proximate result of RTD
22 International and RTD Seattle’s negligence. RTD International and RTD Seattle knew about
23 the dangerously defective axles on its WWII amphibious vehicles before the crash in question.
24 Their negligent, or alternatively, grossly negligent, failure to fix the axle’s defects was a
25 proximate cause to the crash and the resultant injuries that Plaintiffs suffered.
26

1 23. Facts; Plaintiffs suffered damages as a direct and proximate result of RTD
2 International and RTD Seattle's negligence. RTD International and RTD Seattle engaged in a
3 joint business venture that provided a driver who would both drive and give a tour guide at the
4 same time. This practice and procedure was inherently dangerous because it created a situation,
5 like here, where the drivers were distracted. A bad accident flowing from the distractions was
6 foreseeable. These negligent, or alternatively grossly negligent, practices proximately caused
7 the crash and the resultant injuries that Plaintiffs suffered.

8 24. Facts; Plaintiffs suffered damages as a direct and proximate result of RTD
9 International and RTD Seattle's negligence. RTD International and RTD Seattle knew or
10 should have known that the Aurora Bridge had lanes that were too narrow and that were
11 extremely dangerous for wide vehicles, like the retrofitted and remodeled WWII amphibious
12 vehicles that they operated. Despite this knowledge, RTD International and RTD Seattle
13 maintained a joint business venture that permitted its fleet of amphibious vehicles to use the
14 Aurora Bridge, disregarding the dangers at hand. These negligent, or alternatively grossly
15 negligent, practices proximately caused the crash and the resultant injuries that Plaintiffs
16 suffered.

17 25. Facts; Plaintiffs suffered damages as a direct and proximate result of Bishop's
18 negligence. Bishop was an agent of RTD International and RTD Seattle, responsible for the
19 safety and wellbeing of his passengers as well as others on the roads. He knowingly drove a
20 retrofitted and remanufactured WWII amphibious vehicle across a narrow bridge while he was
21 distracted with giving a tour at the same time. Bishop's negligent, or alternatively grossly
22 negligent, conduct was a proximate cause of the crash and the resultant injuries that Plaintiffs
23 suffered.

24 26. Damages. As the proximate result of the negligence, or alternatively, gross
25 negligence, as set forth above, Plaintiffs suffered economic and noneconomic damages in an
26 amount to be proved at trial.

1 27. Punitive Damages. Defendant RTD International is liable for punitive damages
2 under Washington's choice of law.

3 IV. CAUSES OF ACTION

4 COUNT I 5 PRODUCT LIABILITY 6 AS TO RTD INTERNATIONAL

7 28. Product liability. Based on the paragraphs set forth and alleged above,
8 Defendant RTD International is a product manufacturer and seller under RCW 7.72 et seq., and
9 is liable under this chapter for all damages proximately caused by DUKW No. 6 not being of
10 reasonably safe design or construction.

11 COUNT II 12 NEGLIGENCE 13 AS TO DEFENDANTS RTD INTERNATIONAL, 14 RTD SEATTLE, AND BISHOP

15 29. Negligence. Based on the paragraphs set forth and alleged above, Defendant
16 RTD International, RTD Seattle, and Bishop, acting as an agent of RTD Seattle and RTD
17 International, owed a duty of care under law, breached the duty owed, and proximately caused
18 Plaintiffs to suffer damages. These Defendants were either ordinarily negligent, or
19 alternatively, grossly negligent.

20 V. RESERVATION OF RIGHTS

21 30. Reservation of Rights. Plaintiffs reserve the right to assert additional claims as
22 may be appropriate following further investigation and discovery.

23 VI. JURY DEMAND

24 31. Jury Demand. Plaintiffs demand that this action be tried before a jury.

25 VII. PRAYER FOR RELIEF

26 32. Relief. Plaintiff respectfully requests that the Court award the following relief:

 A. All special and general damages established at trial;

- 1 B. Punitive damages under any provision of law under which such damages
2 may be imposed given Washington's choice of law;
3 C. Costs, reasonable attorneys' fees, and statutory interest under any
4 applicable law or ground in equity;
5 D. Pre-judgment interest on special damages and liquidated damages;
6 E. Statutory interest on the judgment from the date judgment is entered until
7 paid in full;
8 F. Such other, favorable relief as may be available and appropriate under
9 law or at equity; and
10 G. Such other and further relief as the Court may deem just and proper.
11

12 Respectfully submitted,
13

14 Dated: March 17, 2016

15 By: /s/ Darrell L. Cochran
16 One of Plaintiffs' Attorneys

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